THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION

AT IRINGA

LABOUR REVISION NO. 08 OF 2022

MUCOBA BANK PLC .... APPLICANT

VERSUS

BARNABA MBINDA .... RESPONDENT

(Originating from Labour Dispute No. CMA/MAF/ARB/34/2020)

RULING

Date of last order: 28.03.2024
Date of Judgement: 24.05.2024

S.M. KALUNDE, J.:

The applicant in this application seeks to revise, quash and set aside the award of the commission for Mediation and Arbitration for Mafinga (hereinafter **"the CMA"**) in Labour Dispute No. CMA/MAF/ARB/34/2020. In its decision, the CMA resolved that the respondent's termination was substantively fair but procedurally unfair. It proceeded to award the respondent TZS. 25,393,846 in compensation.

The facts giving raise to this application as established from the records are simple and clear. In 2013, Barnaba Mbinda, the

respondent herein entered into a contract of employed (**Exhibit R.E.1**) employed with the applicant as an operation supervisor. Thereafter, he was promoted and transferred to Igowole Branch as Center Supervisor. However, on the 14th day of September, 2020, his services were terminated following allegations of negligence occasioning loss to the Bank. Aggrieved by the termination of his employment contract, the respondent referred his grievances to the CMA.

Through **William Michael Solezi** (**SU1**) it was contended that, as a center supervisor, the respondent was responsible for daily branch operations at Igowole branch including supervision over three fellow employees one of whom was as cashier and the other was an office operator. He was also responsible for record keeping relating to various transactions at the branch, including bank deposits, loans and account opening forms. It was alleged that under his supervision sums of money were lost due to negligence and willful neglect to comply with applicable procedures and processes. Following enormous financial losses, bank customers started raising concerns over their deposits. It was at this point that the news got to the attention of the bank headquarters.

Following reports of mismanagement of the bank's finances, the bank commissioned an investigation into the matter. **Hilda V.**

Moleke (SU2) testified that, the bank appointed a team of four bank officials to look into the alleged mismanagement of funds. The team combed through the records at the branch, consulted individual customers holding account and those who have taken out loans with the bank. The team managed to question members of various cooperative groups. The general conclusions of the investigation revealed financial losses in the credit section, violation of procedures in the verification of groups and individual loan customers. The total loss occasioned in each bank department differed, but the total financial loss was estimated at TZS. 131, 285,115.18. The respondent was allegedly found liable for contributing to the loss of around TZS. 19,300,00. Regarding the fate of the individuals who occasioned loss to the bank, the investigative committee recommended that they reimburse the bank of all the losses and disciplinary measures be taken against them, including the respondent. The results of the inquest were reflected in the **"Investigation report at Igowole Centre"** which was admitted in evidence as **Exhibit R.E.5**. On the 04th day of July, 2020, through a dispatch (**Exhibit R.E.6**) a copy of the investigation report was served to the respondent.

In implementing the recommendations of the investigation committee, on the 25th day of July, 2020, the applicant served the respondent with a copy of disciplinary charges (**Exhibit**

R.E.8). The allegations against him included failure to properly supervise transactions; failure to properly supervise bank tellers; loss of customers drawing slips; disbursement of ghost loans; manipulating and changing loan amounts on customers loan forms; and issuance of loans without obtaining appropriate approvals. These charges were reflected in disciplinary proceedings dated the 19th day of August, 2020. The disciplinary committee recommended suspension of the respondents' employment. His appeal to the General Manager was unsuccessful. Accordingly, on the 14th day of September, 2020, the respondent was served with a letter terminating his services.

The respondent, **Barnaba P. Mbinda (SM1)** testified that when he became aware of the losses at the branch, he notified the applicant. To his surprise on the 12th day of June, 2020, he received a notice suspending him pending an investigation into the alleged loss. Thereafter, he attended disciplinary hearings on the 19th – 24th August, 2020. He alleged further that during the disciplinary hearings, the applicant did not present any witness. He also added that before issuance of a termination letter he was issued with a notice to repay the loss occasioned. According to the respondent the notice to repay the money was a decoy as a termination plan had already been agreed. The respondent argued that the loss was not occasioned by his negligence as he

carried out all that he was required to perform in his capacity. He also stated that other employees were also responsible for the loss at the branch.

I have pointed out earlier that, having heard the parties, the CMA resolved that there were valid reasons for the respondent's termination. The CMA was also satisfied that the respondent was not discriminated. However, the CMA made a finding that, in terminating the respondent, the applicant did not follow the appropriate procedure. Specifically, the CMA pointed out that the provisions of Rule 13(1) and 13(2) of **the Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2007** (henceforth **"the Rules"**). The arbitrator awarded the respondent a total of TZS. 25,393,846 in compensation, salary in lieu of notice, and severance pay.

In the present application, the applicant contends that the arbitrator grossly failed to consider and evaluate the oral evidence and exhibits adduced at the CMA. It is further contended that the arbitrator was not rational in his conclusion that the termination of the respondent was procedurally unfair. The award of the CMA is criticized more particularly because the Arbitrator erred in law by:

(a) Failing to sign on the recorded testimony of the witness who appeared before the Arbitrator rendering the proceeding defective.

(b) Entering a finding that the procedures for termination was not followed without critically analyzing the evidence adduced by the Applicant pursuant to exhibits tendered.

(c) In failing to analyze the facts, exhibits and evidence on records and therefore arrived at an erroneous conclusion and unjustifiable award.

(d) Declaring that the Respondent was unfairly terminated yet he was given a fair disciplinary hearing from the disciplinary committee.

(e) Failing to analyse and take into consideration the legal arguments that were put forward by the Applicant's counsel in the closing submissions; and

(f) Awarding severance payments where the termination was caused by a loss done by the Respondent.

To prosecute the application, the applicant had the representation of Mr. Emmanuel Kalikenya Chengula, learned

advocate while the respondent was being represented by Mr. Yusuph Luwumba, learned advocate. The appeal was argued in writing and all submissions were filed in accordance with orders of the court.

I thank parties for their submissions. However, having carefully considered those submissions, I wish to point out that I shall not reproduce the substance of those submissions, instead I shall make reference to those parts that are relevant for the determination of the present matter.

From the records and submissions of the parties, did not dispute that parties are at one that the termination of the respondent was substantively fair. This presupposes that, they all concur that the applicant had valid reasons in terminating the respondents' service. For my part, having carefully gleaned through the records, I am also satisfied that the respondent's termination was substantively fair as there were valid reasons for his termination.

However, it is clear that the arbitrator has been faulted for holding that the applicant did not follow the appropriate procedure in terminating the respondents' services. Before delving into this matter, I think it would be crucial to examine the arbitrators finding on this aspect.

It is on record that, in its award, the CMA made a finding that the termination of the respondent was procedurally unfair on the ground that; **one**, by requiring the respondent to pat TZS. 21, 000,000, through a letter (CE5) the applicant had already made its mind to terminate the respondents' services. **Two**, in failing to supply the respondent with the investigation report (RE5) the applicant violated the provisions of rule 13(1) and (2) of the Rules; and **three**, the respondent was not heard before his appeal was determined.

Responding to the arbitrators reasoning Mr. Chengula argued that there was no basis for the arbitrators finding that by requiring the respondent to pay the TZS. 21, 000,000, the applicant had already made his decision to terminate the respondents' services. The learned counsel argued that it was common practice that before proceeding to institute disciplinary charges attempts must be made to make sure that a person who caused the losses is made to make good of the same.

Regarding service of the investigation report, Mr. Chengula argued that there was evidence that the respondent was dully served with copies of the investigation report (RE5). To support this, the learned counsel cited a dispatch book which was admitted in evidence as exhibit RE6. The learned counsel argued that the admission of the said exhibits was also not objected by

the respondent. His view was that the respondent was dully served with the report. The learned counsel submitted that upon the filing of the appeal, the respondent abandoned the same leaving the appellate authority in limbo. He argued that the respondent, having abandoned the appeal himself, cannot be heard to complain over violation of a right to be heard.

In reply, Mr. Luwumba submitted that the fact that the letter requiring the respondent to pay TZS. 21, 000,000, (CE5) was prepared and served to the respondent on the 23rd July, 2020, and disciplinary hearings were held on the 19th and 24th August, 2020, was a clear indication that the applicant had already made a decision to terminate the respondent before even disciplinary hearings was conducted. As for the investigation report, Mr. Luwumba insisted that the report was not handed to the respondent in the course of disciplinary proceedings. In his view, failure to supply the respondent with the report meant that the proceedings were not fair. For this he cited the case of **Severo Mutegeki & Another vs Mamlaka Ya Maji Safi Na Usafi Wa Mazingira Mjini Dodoma** (Civil Appeal No. 343 of 2019) [2020] TZCA 310 (19 June 2020) TANZLII, at page 19 where it was held that:

> *"It is our considered view that, though the Internal Auditor's ultimate reporting responsibility lies to the*

Director General it is not in dispute that, those actually audited were the appellants and it is the audit report which triggered the charges against them. In that regard, ***the non-involvement of the appellants and subsequent conviction based on that report was irregular because they could not adequately prepare for the hearing before the disciplinary committee of the respondent. Instead, it is the respondent who being in possession of the report had all the ammunition to make a stronger case which was to the disadvantage of the appellants which rendered what followed to be unprocedural."***

Responding on the General Managers' failure to handle the respondents appeal, Mr. Luwumba submitted that there was no evidence at the CMA that upon filing of the appeal, the respondent was invited to by the General Manager to deliberate on the appeal. He argued that by issuing a letter (CE5) requiring the respondent to make good of the TZS. 21, 000,000, and issuance of the termination letter (CE7) the General Manager was impartial. To support his contention, he cited the case of **Bati Services Company Limited vs. Shargia Feizi** (Civil Appeal No.38 of 2021) [2023] TZCA 17595 (5 September 2023) TAZNLII in which the Court of Appeal held, at page 10, *inter alia* that:

"This role could not be impartially discharged in the presence of the Managing Director. We are fortified,

as observed in ***Cooper v. Wilson*** *[1937] 2 K.B. 309 cited to us by the respondent's counsel that, the presence of the Managing Director at whichever capacity in the committee had an influence and lead to a possibility likely sufficient enough to deprive the committee of its mandate to make an impartial decision. On that account, we are unable to agree with the appellant counsel's assertion that the committee was impartial given the foregoing circumstances."*

In light of the above submissions, Mr. Luwumba urged the court to dismiss the application in its entirety and in return uphold the decision of the CMA.

In light of the above submissions, and upon my consideration of the entire records, I gather that the following issues arise for determination; **firstly**, whether by writing a letter requiring the respondent to pay TZS. 21, 000,000, the applicant had already made its mind to terminate the respondents' employment. **Secondly**, whether the applicant failed to supply the respondent with a copy of the investigation report. In doing so I shall also examine whether the report had any bearing on the respondents defence in the disciplinary charges. **Thirdly**, whether the respondent was not afforded a right to be heard before his appeal was determined, if it was indeed determined. Finally, I shall examine the appropriateness of the compensation

award handed down by the arbitrator. I shall respond to the above issues seriatim.

It is not disputed that upon conclusion of the investigation into the alleged misappropriation of funds at Igowole branch, on the 23rd day of July, 2020, the General Manager wrote a letter (CE5) to the respondent requiring him to make good of the TZS. 21, 000,000, allegedly misappropriated by him as indicated in the investigation report. Part of the letter read as follows:

> ***"RE: REFUND OF MISAPROPRIATED FUNDS AT IGOWOLE CENTER-TZS 21,006,022.09.***
>
> *Please refer to the subject matter above.*
>
> *Following the investigation report dated 18th July 2020 presented to me by the investigation team, I have noticed that you misappropriated a total of TZS. 21,006,022.09 through fraudulent transactions. This letter serves to instruct you to return all the money you fraudulently misappropriated not later that 28th July, 2020. Failure to do that the bank will not hesitate to pursue disciplinary measures against your misconduct. This may include taking you to court."*

Further to that, the letter detailed a list of transactions making up the sum of TZS. 21, 000,000, as follows: one, financial loss in respect of ghost clients amounting to TZS. 4, 706,022.09; and two, financial loss in respect of unauthorized

withdrawals which included two transactions making a total of TZS. 16, 300,000. In accordance with the transaction itemized above, the total loss allegedly caused by the respondent stood at TZS. 21, 006,022.09.

I have carefully examined the contents of Exh. CE5 and I am satisfied that the letter was self-explanatory as to how the applicants arrived at the TZS. 21, 000,000. The arbitrators finding that there was no basis for the TZS. 21, 000,000 amount is therefore not supported by the records. In my considered opinion, the letter was very clear on the basis of the amount.

The arbitrator had also questioned the authority to require the respondent to make good of the amount. Having examined the contents of the said report, I do not the arbitrator would have been suspicious of the said decision if he had carefully read the report. I say so because, in its recommendations, the investigation committee made two very clear recommendations: one, that all those responsible should pay the financial loss discovered; and two, disciplinary measures be instated against them. All things being equal, requiring the respondent to pay the money was therefore within the applicant's mandate. Besides, according to the investigation report, something was wrong at Igowole branch and, as a supervisor, the respondent had a hand in the mis happening.

Based on the two recommendations made by the investigation committee, the letter requiring the respondent to pay the money was an implementation of the committee recommendations. I cannot find any other formal ways to inform the respondent of what has happened and his obligation than through the said letter. In view of these observations, there is no scintilla of evidence or indication whatsoever, that by the time the letter was written, the applicants had already resolved to terminate the respondent. As I have pointed out above, the letter was written as an implementation of the recommendations made by the investigative committee. In light of the seriousness of the financial losses uncovered by the investigation committee, actions had to be taken to recover the financial loss and discipline of those involved.

Be as it may, the respondent's failure to make the payments and the subsequent disciplinary proceedings that ended in his termination are in no way an indication that the applicant had made up his mind, to terminate the respondent, long before disciplinary proceedings. If that were true, it may also be correct to say that the decision to terminate the respondent had already been made when the committee was formulated, which is not the case. As I pointed out earlier, the report had made both

recommendations. The arbitrators finding on this aspect are also unfounded.

Next, I shall consider whether the applicant failed to supply the respondent with a copy of the investigation report. In doing so I shall also examine whether the report had any bearing on the respondents defence in the disciplinary charges. In its decision the arbitrator remarked that failure to supply the respondent with a copy of the investigation report was a violation of rules 13(1) and (2) of the Rules. The respective rules are couched in the following terms:

> *13.-(1) The employer shall conduct an investigation to ascertain whether there are grounds for a hearing to be held.*
>
> *(2) Where a hearing is to be held, the employer shall notify the employee of the allegations using a form and language that the employee can reasonably understand.*

The language in the above provision is plainly clear that before conducting a hearing an employer must carry out an inquiry to establish whether there are grounds for a hearing to be held. When a decision is made to conduct a hearing, rule 13(2) obliges the employer to notify the employee of all the allegations in a form and language that the employee can reasonably understand.

Having examined the records, I am satisfied that the applicant complied with all the above provisions. I shall illustrate as I go along. I have pointed out earlier in this decision that, prior to the disciplinary hearings a committee was made to investigate the alleged violation of procedures and misappropriation of funds. An investigation was conducted during which the committee interviewed various clients whose funds were misappropriated. Various records were also scrutinized and examined. The respondent and all those involved were also questioned. A comprehensive outline of the committee methodology is reflected as part of the report. In my considered view, rule 13(1) was complied with. The arbitrators view on this are also questionable.

The records indicate that on the 13th day of August, 2020, summons and charges were communicated to the respondent via a letter titled **"WITO WAS KUFIKA KATIKA KAMATI YA NIDHAMU"** exhibit **RE8**. Literally translated **"SUMMONS TO ATTEND BEFORE THE DISCIPLINARY COMMITTEE"**. The notice informed the respondent to attend before the Disciplinary Committee on the 19th day of August, 2020 at 09:00Hrs. Thereafter, the charge sheet outlined seven counts by indicating, for each count, the statement of offence and particulars of the offence. Each statement of offence stated a particular Bank Policy

violated followed by a statement of detailed particulars of the alleged breach.

It is also clear from the above factual dispositions that the respondent was afforded reasonable time to prepare for the hearings as directed under rule 13(3) which requires a notice of more that 48 hours. In the present case the respondent had roughly five clear days which is equivalent to almost 120 hours. The records of the disciplinary proceedings, exhibit RE9 also demonstrates that evidence against each charge was presented at the hearing in compliance with rule 13(5). The records show that disciplinary hearings were conducted for two days, that is on the 19th August, 2020, and concluded on the 24th August, 2020, and therefore well within reasonable time as prescribed under rule 13(4).

The records show further that, after he was found guilty, the respondent had an opportunity to mitigate. This is seen on the proceedings dated the 24th August, 2020. This was, therefore, in compliance with rule 13(7). Rules 13(8) and 13(10) concerning the outcome of the hearings and the decision were communicated to the respondent through the termination letter, exhibit CE7. There was therefore no violation of rules 13(1) and (2) of the Rules.

Turning to the allegations that the respondent was not served with the investigation report, I find those allegations to bare no semblance of truth. First, it is clear from the records that the investigation committee appended their signature to the report on the 03rd July, 2020. The next day, on the 04th July, 2020, a copy of the report was handed to the respondent as a head of the branch. This is witnessed through the testimony of SU2 at page 10 of typed proceedings and the dispatch book, exhibit RE6. Secondly, even assuming, without deciding here that, the report was not handed to the respondent, the evidence against each count was presented to the respondent and he had a clear picture of the circumstances of the allegations. Thirdly, if the respondent wanted the report, he had an opportunity to request to be supplied with the same or any other piece of evidence. The summons which was supplied to him informed him that if he wanted any evidence or document he had an opportunity to be supplied with the same. Part of the said summons read:

> "***TAFADHALI ZINGATIA YAFUATAYO: -***
>
> *(a) Unatakiwa kuleta utetezi wako siku hiyo ya kikao au kabla ukionesha sababu kwa nini usichukuliwe hatua za kinidhamu kutokana na makosa tajwa hapo juu.*

(b) Unataarifiwa kuwa unayohaki ya kufika kwenye kikao na mfanyakazi mwenzio, au mtu mwingine unaemuamini, au mwakilishi wa chama chako cha wafanyakazi TUICO.

(c) Upatapo wito huu tafadhali saini ili kuthibitisha kwamba umepokea wito.

(d) Endapo utakataa kusaini wito huu basi yote yaliyomo kwenye wito huu yatazingatiwa kuwa ulifahamishwa juu ya wito na muda wa kikao cha nidhamu.

(e) Endapo hautafika katika kikao cha nidhamu siku na wakati uliopangwa bila taarifa, itahesabika umefuta haki yako ya kujitetea na kuifanya kampuni iendelee na kikao bila kujali kutofika kwako.

(f) ***Tafadhali ijulishe kampuni endapo utahitaji maelezo au nyaraka zozote kuhusiana na shauri hilo masaa 48 kabla ya kikao cha nidhamu kufanyika.***

(g) Endapo kutakuwa na sababu zingine zinazoweza kuahirishwa kusikilizwa shauri hili unapaswa kuipa kampuni taarifa ndani ya masaa 48 kuomba ahirisho la kikao."

[Emphasis is mine]

The highlighted paragraph, item (f) above, informed the respondent that he had a right to be supplied with any document from the applicant by notifying them not less than 48 hours

before commencement of the disciplinary proceedings. The respondent did not request the said report, if he really wanted a copy, or at least there is no evidence to that effect. Having abdicated that opportunity, he cannot be heard to complain. Similarly, the arbitrator has no basis for his finding that the report was not supplied.

I now turn to the allegation of breach of the right to be heard by the appellate body, the General Manager. At the very outset I wish to state that the right to be heard is a foundation of our Constitution and a pinnacle to our justice system. It is for this reason that in the case of **Mbeya - Rukwa Auto parts and Transport Ltd vs. Jestine George Mwakyoma** [2003] TLR 251, the Court of Appeal held that: -

> *"In this country natural justice is not merely a principle of common law; it has become a fundamental constitutional right Article 13 (6) (a)includes the right to be heard amongst the attributes of equality before the law, and declares in part:*
>
> > *To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely: when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing."*

Similarly, in the case of **I.P.T.L. vs Standard Chartered Bank**, Civil Revision No. 1 of 2009 (unreported), the Court lucidly stated that no decision must be made by any court of justice, body or authority entrusted with the power to determine rights and duties so as to adversely affect the interests of any person without first giving him a hearing according to the principles of natural justice.

In the present case, there is no dispute that the disciplinary committee issued it decision on the 24th day of August, 2020. Two days later, on the 24th day of August, 2020, the respondent lodged his appeal to the General Manager (CE7) outlining his grounds of appeal and stating the facts upon which the grounds were raised. There is no evidence that the General Manager summoned the appellant or offered him an opportunity to be heard. Instead, on the 14th day of September, 2020, the General Manager delivered his verdict on the appeal in the termination letter without having heard the respondent.

If the respondent was not called to explain the grounds for his termination, it is clear that there were no materials upon which the General Manager would conclude that the respondents appeal was without merits. In short, the General Manager took it upon himself to deliberate on the appeal without hearing the appellant who had lodged the appeal. This was a clear violation of

the right to be heard. As was stated in **I.P.T.L. vs Standard Chartered Bank** (supra) since the decision of the General Manager was going to adversely affect the interests of the respondent, the General Manager ought to have afforded the respondent an opportunity to be heard. Thus, the failure to accord the appellants an opportunity to be fully heard was a breach of natural justice and a violation of a fundamental right to be heard under Article 13 (6) (a) of **the Constitution of the United Republic of Tanzania, 1977**. The arbitrator was correct in his finding. The termination of the respondent was therefore correctly unfair only to the extent explained above.

Finally, I will consider the validity of the compensation awarded by the arbitrator. The arbitrator awarded the respondent a total of TZS. 25,393,846 in compensation (TZS. 21,240,000), salary in lieu of notice (TZS. 1,260,000) and severance pay (TZS. 2,713,846). The remedies for unfair termination are outlined under section 40(1) of **the Employment and Labour Relations Act [CAP. 366 R.E. 2019]** which reads:

> *40.- (1) Where an arbitrator or Labour Court finds a termination is unfair, the arbitrator or Court may order the employer –*
>
> *(a) to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the*

employee was absent from work due to the unfair termination; or

(b) to re-engage the employee on any terms that the arbitrator or Court may decide; or

(c) to pay compensation to the employee of not less than twelve months remuneration.

The above provision has been interpreted to mean that, while awarding compensation in excess of twelve months in salary is a discretion of the arbitrator, that discretion must be exercised judiciously. This view was stated in the case of **Pangea Mineral Limited vs Joseph Mgalisha Bulabuza** (Civil Appeal No.282 of 2021) [2023] TZCA 17471 (4 August 2023) TANZLII, where the court held that:

> *"Moreover, we are aware that the arbitrator has a discretion to decide on the appropriate compensation which could be over and above the prescribed minimum. However, the discretion must be exercised judiciously taking into account all the factors and circumstances in arriving at a justified decision. Where discretion is not judiciously exercised, certainly, it will be interfered with by the higher courts as we observed in* ***Veneranda Maro and another v Arusha International Conference Centre****, Civil Appeal No. 322 of 2020 and* ***Pangea Minerals Limited v Gwandu Majali****, Civil Appeal No. 504 of 2020 (both unreported)."*

Before making the above observation, the Court had noted that issuance of compensation is not to punish the employer but rather to compensate the loss incurred by the employee. The Court noted that the remedies flowing from unfair termination do not suggest that it was mandatory for an arbitrator to order compensation of more than 12 months remuneration. The Court further note that unfairness of termination is on procedural ground, counted less in favour of awarding compensation beyond 12 months than in the case, if it is both substantively and procedurally unfair.

In the case at hand, the termination of the respondent is substantively fair and partly procedurally unfair. I say partly because in light of the findings stated above, the unfair part only related to denial of the right to be heard at the appellate level. For these reasons I have a legal justification to interfere and revise the award of 17 months. Considering that the termination was substantively fair, I find it impractical to order the reinstatement of the appellant.

Regarding severance pay, the CMA had awarded the respondent TZS. 2,713,846. However, I am aware that severance pay is governed by rule 26 (2)(b) of the Code of Good Practice. For clarity, the respective rule read:

"26 - (2) The employer is not required to pay severance pay if the employment is terminated-

(a) Before the completion of the first year of employment;

(b) Fairly on grounds of misconduct;

(c) On grounds of incapacity, incompatibility or operational requirements and the employee unreasonably refuses to accept alternative work with the employer or alternative employment with any other employer."

[Emphasis is mine]

In the instant dispute, the respondent's termination was substantively fair in that there was misconduct on his part resulting into misappropriation and occasioning loss to his employer. In terms of the law as reproduced above, the respondent is not entitled to severance allowance. **Bati Services Company Limited vs Shargia Feizi** (Civil Appeal No.38 of 2021) [2023] TZCA 17595 (5 September 2023) TANZLII.

For the reasons I have endeavored to assign above, I hold that the respondent's termination substantively fair and partly procedurally unfair. That said, the application partly succeeds in that I revise the compensation for 17 months remuneration and substitute the same with 12 months remuneration compensation.

The order for payment of TZS. 2,713,846 in severance pay is also revised and set aside. The remaining award remains unaffected.

It is so ordered.

DATED at **IRINGA** this **24th** day of **May, 2024.**

S. M. Kalunde

JUDGE